



Billing Code 8025-01

SMALL BUSINESS ADMINISTRATION

13 CFR Part 124

RIN: 3245-AF53

Small Business Size Regulations; 8(a) Business Development/Small Disadvantaged

Business Status Determinations; Correction

AGENCY: U.S. Small Business Administration.

ACTION: Correcting amendments.

SUMMARY: The U.S. Small Business Administration (SBA) published a final rule in the Federal Register on February 11, 2011, to amend the 8(a) Business Development (BD) program and SBA size regulations, and the regulations affecting Small Disadvantaged Businesses (SDBs). That rule was published with a few inadvertent errors that are corrected in this document.

DATES: Effective Date: This rule is effective [Insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: LeAnn Delaney, Deputy Associate Administrator, Office of Business Development, at (202) 205-5852, or LeAnn.Delaney@sba.gov.

SUPPLEMENTARY INFORMATION:

Need for Correction

In amending § 124.3, definition for “Primary industry classification” SBA intended the time period to consist of three years not the two years provided for in the definition. This change from two years to three years was made in other portions of the

rule but was inadvertently not changed in 124.3. Correction of this oversight would make the section consistent with related provisions of the rule.

As stated in the preamble of the final rule, SBA intended to make the provisions pertaining to Tribes, ANCs, NHOs, and CDCs consistent. The section addresses when a subsidiary is eligible for award of a follow on contract. The change was inadvertently only made to the Tribes and ANC provisions. Therefore, SBA is correcting § 124.110(e) and § 124.111(d) to make these provisions, relating to Native Hawaiian Owned (NHO) entities and Certified Development Companies (CDCs) respectively, consistent with the same language pertaining to tribally and Alaskan Native Corporation (ANC) and NHO owned entities. Additionally, SBA is changing § 124.111(d) which contains a reference to SIC instead of NAICS.

In §§ 124.112(b)(6) and (d)(1) SBA is correcting typographical errors that result in the wrong word choice. The word “contacts” is replaced with the word “contracts” in (b)(6) and the word “though” is replaced with the word “through” in (d)(1)

In § 124.513(c)(4) SBA omitted the word “populated”, which is necessary for the public to be able to distinguish the treatment of profit distribution between populated and unpopulated joint ventures. This section will be corrected to insert the missing word.

With regard to § 124.519, SBA provided incorrect instructions to the Federal Register for the amendments to paragraph (a) that was inconsistent with the intended amendment as discussed in the preamble for the final rule. Specifically, SBA intended to amend only the introductory text of § 124.519(a) but provided instructions that amended the entire paragraph (a) resulting in the unintended removal of paragraphs (1) through (3). SBA is making the correction here to reinsert those paragraphs.

Finally, to avoid confusion for the public, SBA is correcting awkward language in § 124.520(c)(3) to clearly articulate the standards, as discussed in the preamble, for permitting a protégé firm to have more than one mentor.

List of Subjects in 13 CFR Part 124

Administrative practice and procedures, Government procurement, Hawaiian natives , Indians – business and finance, Minority businesses, Reporting and Recordkeeping requirements, Tribally-owned concerns, Technical assistance. Accordingly, 13 CFR Part 124 is corrected by making the following correcting amendments:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, sec. 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

2. In § 124.3 amend the definition for “primary industry classification” by removing the word “two-year” and adding in its place the word “three-year” in the 4th sentence.

3. Amend § 124.110(e) by revising the third sentence to read as follows:

§ 124.110 Do Native Hawaiian Organizations have any special rules for applying to the 8(a) BD program?

* * * * *

(e) * * * In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a)

contract that was performed immediately previously by another Participant (or former Participant) owned by the same Native Hawaiian Organization. * * *

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4. Amend § 124.111(d) to read as follows:

§ 124.111 Do Community Development Corporations (CDCs) have any special rules for applying to the 8(a) BD program?

* * * * *

(d)* * * In addition, once an applicant is admitted to the 8(a) BD program, it may not receive an 8(a) sole source contract that is a follow-on contract to an 8(a) contract that was performed immediately previously by another Participant (or former Participant) owned by the same CDC. * * *

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5. Amend § 124.112 as follows:

a. Amend paragraph (b)(6) by removing the word “contacts” and adding the word “contracts” in its place.

b. Amend the second sentence in paragraph (d)(1) by removing the word “though” and adding the word “through” in its place.

6. Amend § 124.513(c)(4) by adding the word “populated” before the word “separate.”

7. Amend § 124.519 by adding paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 124.519 Are there any dollar limits on the amount of 8(a) contracts that a Participant may receive?

(a) * * *

(1) For a firm having a receipts-based primary NAICS code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is five times the size standard corresponding to its primary NAICS code which is determined as of the date of SBA's acceptance of the requirement for the 8(a) BD program or \$100,000,000, whichever is less.

(2) For a firm having an employee-based primary NAICS code at time of program entry, the limit above which it can no longer receive sole source 8(a) contracts is \$100,000,000.

(3) SBA will not consider 8(a) contracts awarded under \$100,000 in determining whether a Participant has reached the limit identified in paragraphs (a)(1) and (a)(2) of this section.

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8. Amend § 124.520 by revising paragraph (c)(3) to read as follows:

§ 124.520 What are the rules governing SBA's Mentor/Protégé program?

* * * * *

(c) * * *

(3) A protégé firm may generally have only one mentor at a time. The AA/BD may approve a second mentor for a particular protégé firm where the second relationship will not compete or otherwise conflict with the business development assistance set forth in the first mentor/protégé relationship and either:

(i) The second relationship pertains to a, secondary NAICS code; or

(ii) The protégé firm is seeking to acquire a specific expertise that the first mentor does not possess.

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Dated: May 4, 2012

A. John Shoraka,
Associate Administrator for Government Contracting and Business Development

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